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JURY—RIGHT TO TRIAL BY TWELVE JURORS—WAIVER OF JURY.—Accused pleaded not guilty. A jury was impanelled. After admission of the evidence and argument of counsel, one of the jurors could not be found. Accused asked that the case be submitted to the remaining eleven jurors. The court complied with the request. The eleven jurors rendered a verdict of guilty. *Held,* that the accused could not waive a jury of twelve jurors, in the absence of a statute conferring such a right and the conviction should be set aside. *Jennings* v. *State* (1908), — Wis. —, 114 N. W. Rep. 492.

The question raised by the principal case has repeatedly been discussed by the courts of this country. It is very generally held that a jury trial, in contemplation of the constitution, is a trial by twelve jurors. Hence, in states in which it has been held that the accused may not waive a jury trial, it has most often been held that he may not agree to a trial by less than twelve jurors. But see *State* v. *Grossheim,* 79 Ia. 75, 44 N. W. 541. The weight of authority undoubtedly holds with the principal case that, in cases of felony, a jury of less than twelve jurors may not be agreed to. *Bell* v. *State,* 44 Ala. 393; *People* v. *O'Neil,* 48 Cal. 257; *Hunt* v. *State,* 61 Miss. 577; *State* v. *Scruggs,* 115 N. C. 805; *Cancemi* v. *People,* 18 N. Y. 128; *Hill* v. *People,* 16 Mich. 351. On the other hand, many courts hold that a trial by less than twelve jurors is valid if the accused assents. *State* v. *Kaufman,* 51 Ia. 578, 33 Am. Rep. 148; *State* v. *Sackett,* 39 Minn. 69; *Commonwealth* v. *Dailey,* 12 Cush. (Mass.) 80. But the cases are not as squarely in conflict as might be supposed. In many of the states which hold that a trial by less than twelve jurors may not be agreed to, the constitutional provision providing for jury trial has been construed as establishing the only competent tribunal to try issues of fact in criminal cases. In such states, of course, the accused could not be regarded as having any right which might be waived and therefore no logical objection can be urged against the decisions based on such a construction of the constitution. But in other states, the reason given for denying the right of waiver is that the public has an interest in preventing the conviction of an innocent person and such interest is best preserved by retaining a jury of twelve jurors. This reasoning has been severely criticised by courts which allow a waiver on the ground that the accused has been allowed to waive practically all the rights given to an accused person by the constitution and that the preservation of jury trial is of no more importance to the public than the preservation of these other rights. Hence, no distinction should be made between them. The tendency of the courts would seem to be in favor of a more liberal doctrine of waiver.

LARCENY—STEALING VOID TOWN ORDERS.—The defendant was a member of the Board of Supervisors of a certain town. With the expectation of fraudulently procuring money, the board entered into a conspiracy to present the claims of fictitious persons against the city to the board. The claims were presented and allowed by the board and town orders were made out for the amount fraudulently claimed to be due. Defendant cashed three of those town orders and thereby obtained over $700 in money. *Held,* that he was guilty of larceny. *Vought et al.* v. *State* (1908), — Wis. —, 114 N. W. Rep. 518.